

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN GENE MCINTOSH,

Defendant and Appellant.

G051856

(Super. Ct. No. 12WF3152)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Vickie L. Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

We appointed counsel to represent appellant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the trial court no issues were found to argue on appellant's behalf. Appellant was given 30 days to file written argument in appellant's own behalf. That period has passed, and we have received no communication from appellant.

A felony complaint, filed on November 21, 2012, alleged defendant Brian Gene McIntosh violated Health and Safety Code section 11377, subdivision (a), possession of a controlled substance. The complaint also alleged defendant committed a prior serious and violent crime in 2002, robbery, that he served time in prison for that robbery, and that he did not remain free for five years after he was released. It is further alleged he was twice previously convicted of possession of a controlled substance and served separate terms in prison for those crimes.

On January 3, 2013, defendant pled guilty to the charge, providing the following factual statement to support his plea: "In Orange County, California, on 11/20/12 I willfully and unlawfully possessed a usable quantity of methamphetamine." During the guilty plea process, defendant was advised of his constitutional rights and gave up those rights. Defendant further admitted it was true that he was previously convicted of committing two robberies and two drug offenses. When he admitted those prior crimes to be true, defendant hand wrote on the court form: "DA strikes strike prior & prison prior for sentencing purposes."

Before accepting defendant's guilty plea, the court personally questioned him and ascertained he freely and voluntarily gave up his constitutional rights. During that questioning, the court asked defendant: "And is it your understanding that you're going to be pleading guilty to the charge against you and give up your right to challenge the strike allegations and prison prior allegations against you and be sentenced to serve 16 months in state prison?" Defendant responded: "Yes." The court thereafter granted

the People's motion to strike the prior serious and violent crime allegation as well as the allegations of prison priors. The court sentenced defendant to 16 months in prison.

On April 2, 2015, defendant filed a petition for reduction of his sentence and resentencing pursuant to Penal Code section 1170.18, subdivisions (a) and (f). When the matter was discussed on the record that day, the court noted defendant had another pending misdemeanor charge for possession of paraphernalia. The court indicated a willingness to grant defendant's requests, but declined to release him from supervision due to defendant's "significant history, including a strike prior in 2002, and the three prison priors that he admitted." Defendant pled guilty to the recent misdemeanor charge, the court sentenced him to 14 days on that charge, reduced defendant's conviction to a misdemeanor, resentenced defendant, ordered the sentences for his recent misdemeanor and his January 3, 2013 conviction to be served concurrently and placed defendant on parole for one year.

On August 12, 2015, the court again resentenced defendant, citing *People v. Morales* (2015) 238 Cal.App.4th 42, review granted August 26, 2015, S228030. On that date, defendant was discharged from parole.

Defendant appealed from "the order or judgment: 4/2/15." Defendant is not entitled to *Wende* review of postconviction proceedings. (*People v. Serrano* (2012) 211 Cal.App.4th 496.) We have examined the record and found no viable appellate issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellate counsel was correct that there are no arguable issues presentable on appeal in this case.

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.